

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 80px;">vs.</p> <p>VOICEXPRESS,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-50</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued August 30, 2005)

On July 21, 2005, pursuant to Iowa Code §§ 476.3 and 476.103, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by VoiceXpress. Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On June 13, 2005, the Board received a complaint from Marvin Jackson of Marion, Iowa, alleging that his phone bill included an unauthorized charge of \$14.95 for a service he did not order. Mr. Jackson stated his wife, Fern Jackson, completed

an online survey but did not know she was ordering a service that resulted in the disputed charge.

Board staff learned the disputed charge was submitted on behalf of VoiceXpress. Board staff identified the matter as C-05-117 and, pursuant to Board rules, on June 22, 2005, forwarded the complaint to VoiceXpress for response. The Board received a response from VoiceXpress on June 30, 2005, stating that Mrs. Jackson completed a survey on an Internet Web site on May 11, 2005, and that the company's voicemail service was offered on the site. VoiceXpress stated the service, billing, and terms for the service were clearly disclosed and attached copies of what it labeled as a sample Web page and a page containing customer information. VoiceXpress noted that after Mr. Jackson contacted its customer service department on June 3, 2005, it canceled the service and issued a refund of \$14.95.

On July 11, 2005, Board staff issued a proposed resolution concluding that VoiceXpress violated the Board's cramming rules by failing to follow the standards outlined in the Board's rules for letters of agency. Staff observed that the company had improperly combined the letter of agency used to obtain the customer's authorization with an inducement of free grocery coupons and that the letter of agency was not clearly legible.

In its July 21, 2005, petition, Consumer Advocate notes that Mr. and Mrs. Jackson deny that the sample Web page submitted by the company appeared on their computer screen and deny ordering the service. Consumer Advocate supports

the proposed resolution finding a cramming violation but asserts that the resolution should be augmented with a civil penalty because credits alone will not stop the unlawful practice of cramming. Consumer Advocate argues that civil penalties are necessary to ensure compliance and deter future violations.

On July 29, 2005, the Board received a letter from counsel for VoiceXpress requesting a formal proceeding concerning staff's proposed resolution. VoiceXpress asserts the proposed resolution's finding that the company violated the Board's cramming rules should be rejected or modified. The Board will not consider VoiceXpress's request for formal proceeding as it was not filed within 14 days of the proposed resolution as required by Board rules, see 199 IAC 6. This deadline was also explained in the proposed resolution. However, VoiceXpress will not be disadvantaged as it will have the opportunity to contest the proposed resolution in the context of Consumer Advocate's petition for proceeding to consider civil penalty, which was timely filed and will be granted.

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation into this matter. The Board will grant Consumer Advocate's petition for proceeding to consider a civil penalty. However, because the request for formal proceeding filed by VoiceXpress did not respond directly to the allegations raised in Consumer Advocate's petition, the Board will delay establishing a procedural schedule to allow VoiceXpress an opportunity for such response.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on July 21, 2005, is granted. File C-05-117 is docketed for formal proceeding, identified as Docket No. FCU-05-50.

2. VoiceXpress is directed to file a response to Consumer Advocate's petition within 30 days of the date of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 30th day of August, 2005.